

EXHIBIT 54

Raleigh, NC

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----x

In Re: PHARMACEUTICAL INDUSTRY) MDL No. 1456
 AVERAGE WHOLESALE PRICE LITIGATION) Civil Action

-----x 01-12257-PBS

THIS DOCUMENT RELATES TO:)

United States of America, ex rel.) Hon. Patti B.

Ven-A-Care of the Florida Keys,) Saris

Inc., v. Abbott Laboratories, Inc.,)

Civil Action Nos. 06-11337-PBS and)

07-CV-11618-PBS and United States)

of America ex rel. Ven-a-Care of) Video 30(b)(6)

the Florida Keys, Inc., v. Dey,) Deposition of

Inc., et al., Civil Action No.) State of North

05-11084-PBS and United States of) Carolina Dept.

America ex rel. Ven-a-Care of the) of Health &

Florida Keys, Inc., v. Boehringer) Human Services

Ingelheim Corp., et al., Civil) by Lisa Weeks

Action No. 07-10248-PBS) Raleigh, NC

-----x October 21, 2008

Reporter: Marisa Munoz-Vourakis-RMR, CRR, Notary Public

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1 A. Okay.
 2 Q. Okay. This is the letter dated October
 3 4, 2001 from CVS Pharmacy to Sharman Leinwand,
 4 coordinator drug utilization review North
 5 Carolina Department of Health Human Services,
 6 Division of Medical Assistance.
 7 Did Sharman work part time in the
 8 pharmacy division that you work in now?
 9 A. Yes.
 10 Q. And what does this letter from CVS to
 11 North Carolina DMA discuss? What does it refer
 12 to?
 13 A. A pharmacist's position on the proposed
 14 state MAC list.
 15 Q. Does CVS support the MAC list?
 16 A. No.
 17 Q. What are its argument as to why it does
 18 not support the MAC list?
 19 A. I believe their concern was that it
 20 would possibly move pharmacies to dispense the
 21 more expensive brand name alternative.
 22 Q. And did North Carolina implement a MAC

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1 list even after it received this letter from CVS?
 2 A. Yes.
 3 Q. And did the MAC list in fact result in
 4 an increase of brand drug use versus generic drug
 5 use?
 6 A. Not that I'm aware of, no.
 7 Q. Turn to the second page, the bottom
 8 paragraph section in bold there, if you could
 9 read those two sentences for me?
 10 A. The cost associated with generic
 11 pharmaceuticals are not the problem. Retail
 12 pharmacy reimbursement is not the problem.
 13 Q. And what is your understanding of what
 14 CVS -- what is the state's understanding of what
 15 CVS was referring to when it made those
 16 statements?
 17 MR. KATZ: Objection to form.
 18 A. I believe that the pharmacy providers
 19 felt that the brand name drugs were more
 20 problematic than the generics.
 21 Q. And how does that have to do with the
 22 state MAC list?

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1 A. I'm not understanding the question.
 2 Q. Well, I think you said that the state
 3 MAC program would deal with generic drugs, is
 4 that correct?
 5 A. Yes.
 6 Q. And so the CVS response here deals
 7 specifically with their view of whether or not
 8 the state MAC list would be beneficial to the
 9 state program. And what is their view of what
 10 the state MAC list might do to the state's --
 11 forget it.
 12 I need to show you another document.
 13 MS. YAVELBERG: Mark this as Exhibit 4.
 14 (The document referred to was
 15 marked Plaintiff's Exhibit Weeks 004 for
 16 identification.)
 17 Q. Take a minute to look that letter over.
 18 (Pause.)
 19 Q. Okay. This is the letter dated October
 20 5, 2001 to Sharman Leinwand of DMA, and it is a
 21 letter on behalf of the North Carolina Retail
 22 Merchant's Association signed by Fran Preston?

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1 MR. KATZ: It's not signed.
 2 MS. YAVELBERG: I'm sorry?
 3 MR. KATZ: I said it's not signed.
 4 Q. Lisa, have you seen this document
 5 before?
 6 A. Yes.
 7 Q. And where have you seen it before?
 8 A. Mercer had it. Mercer had it.
 9 Q. And have you seen it -- this is a
 10 letter dated from 2001. So have you seen it more
 11 recently than 2001?
 12 A. Yes, I reviewed it recently.
 13 Q. And did you provide it to anyone?
 14 A. Yes.
 15 Q. To who?
 16 A. As part of the subpoenas for Abbott,
 17 Dey and the United States Department of Justice.
 18 Q. It was provided in response to those
 19 subpoenas?
 20 A. Yes.
 21 Q. So this was gathered in response to
 22 that subpoena?

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 70</p> <p>1 part of the State of North Carolina?</p> <p>2 A. The general assembly.</p> <p>3 Q. And what was the reason for that change</p> <p>4 by the state?</p> <p>5 A. To encourage pharmacists to dispense</p> <p>6 generics.</p> <p>7 Q. And how would that change encourage</p> <p>8 pharmacists to dispense generics?</p> <p>9 A. It would encourage them to dispense</p> <p>10 generics by providing them a higher dispensing</p> <p>11 fee.</p> <p>12 Q. As compared to what?</p> <p>13 A. As compared to the dispensing fee</p> <p>14 provided for the brand name drugs.</p> <p>15 Q. And why would North Carolina want the</p> <p>16 pharmacies to dispense generics versus brands?</p> <p>17 A. Generally they are less expensive than</p> <p>18 brands.</p> <p>19 Q. And does that have an overall impact on</p> <p>20 the Medicaid reimbursement outlay?</p> <p>21 A. Yes, it reduces expenditures for</p> <p>22 pharmacy.</p>	<p style="text-align: right;">Page 72</p> <p>1 like I say, there's a process that involves</p> <p>2 divisions, the departments, secretary's office,</p> <p>3 the legislators, the provider community. There</p> <p>4 has to be, you know, consensus, and then at that</p> <p>5 point it gets submitted to CMS, and then it takes</p> <p>6 CMS time to review it, and sometimes CMS</p> <p>7 disagrees with the state plan change request.</p> <p>8 It's a big process.</p> <p>9 Q. And absent the challenges that might be</p> <p>10 involved in changing the state plan, the</p> <p>11 reimbursement methodology through the state plan</p> <p>12 process, are there any other reasons why taking a</p> <p>13 very significant discount off of AWP would be --</p> <p>14 why didn't the state do that in order to</p> <p>15 encourage the dispensing of generics versus</p> <p>16 brands? Why didn't it say well, for brands,</p> <p>17 we're going to reimburse AWP minus 50 percent,</p> <p>18 for example?</p> <p>19 MR. KATZ: Objection to form.</p> <p>20 A. Well, that the state often is concerned</p> <p>21 with, like I've mentioned earlier, access issues</p> <p>22 for the patients, Medicaid recipients.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Instead of changing the dispensing fee</p> <p>2 for brands or generics to give the generics a</p> <p>3 higher dispensing fee and the brands a lower</p> <p>4 dispensing fee, why not instead take the brand</p> <p>5 name drugs and significantly reduce the</p> <p>6 reimbursement on the ingredient side, for</p> <p>7 example, by changing the reimbursement</p> <p>8 methodology to AWP minus 50 percent for example?</p> <p>9 MR. KATZ: Objection, form.</p> <p>10 A. It's not easy to do that. It's not</p> <p>11 easy to change the reimbursement formula.</p> <p>12 Q. Why not?</p> <p>13 A. Because well, first of all, it requires</p> <p>14 a state plan change, and there also has to be buy</p> <p>15 in from legislators, providers, the division, the</p> <p>16 department.</p> <p>17 Q. And when you said it's not easy to do</p> <p>18 that because it would require a state plan</p> <p>19 change, why is it difficult to change a state</p> <p>20 plan?</p> <p>21 A. A change in a state plan takes years</p> <p>22 sometimes to do that, because there's -- it has,</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. And what does that have to do with the</p> <p>2 reimbursement rate?</p> <p>3 A. Because the state, again, tries to</p> <p>4 cover cost of the drugs for the pharmacy to</p> <p>5 provide to the Medicaid recipient.</p> <p>6 Q. And taking a bigger discount off of</p> <p>7 AWP, what would the relationship be to the cost?</p> <p>8 MR. KATZ: Objection, form.</p> <p>9 A. Possibly some pharmacies may not be</p> <p>10 able to purchase a drug at a significantly</p> <p>11 discounted reimbursement.</p> <p>12 Q. Reimbursement meaning?</p> <p>13 A. AWP minus, you know, ten percent, but</p> <p>14 the discount.</p> <p>15 Q. Are you familiar with the North</p> <p>16 Carolina Association of Pharmacist's association</p> <p>17 initiative to increase voluntarily the generic</p> <p>18 dispensing of drugs for Medicaid patients?</p> <p>19 A. Yes.</p> <p>20 Q. How did this come about?</p> <p>21 A. It was a proposal by the pharmacy</p> <p>22 community as an alternative, I believe, to the</p>

19 (Pages 70 to 73)

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<p>1 just know that they have a confidential 2 proprietary database of cost information. 3 Q. But it's obvious from this policy that 4 that actual acquisition cost is some number below 5 the average wholesale price, right? 6 MS. HAYES: Objection, form. 7 MS. YAVELBERG: Objection, form. 8 A. It says it's between the actual 9 acquisition cost and actual wholesale price of a 10 generic drug, that's where the price is 11 established. 12 Q. But with respect to this policy, the 13 state understands that the actual acquisition 14 cost is below the average wholesale price, right? 15 MS. YAVELBERG: Objection, form. 16 A. It says between, so, yes, I think you 17 are correct, that would be a correct assumption. 18 Q. Okay. And in this policy, there's a 20 19 percent margin built in above the actual 20 acquisition cost, right? 21 A. Yes. 22 Q. So this ensures that if a pharmacy</p>	<p>1 pricing is substantially higher than that 20 2 percent? 3 A. Okay. 4 Q. So you would have to agree with me then 5 that the Medicaid agency anticipates that in most 6 cases, the margin will be higher than 20 percent, 7 right? 8 MS. HAYES: Objection, form. 9 MS. YAVELBERG: Objection, form. 10 A. Yes, it says in most cases, MAC price 11 is substantially higher than this 20 percent. 12 Q. It's not even just higher than the 20 13 percent, substantially higher, right? 14 A. That's what this document says. 15 Q. Okay. 16 (The document referred to was 17 marked Defendant's Exhibit Dey 063 for 18 identification.) 19 MR. KATZ: Why don't we change the 20 tape. We only have two minutes left, but no 21 break. 22 THE VIDEOGRAPHER: End of tape No. 5 in</p>
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<p>1 purchases the drug at actual acquisition cost, 2 gets reimbursed at the MAC price, that they will 3 have a 20 percent margin, right? 4 MS. YAVELBERG: Objection, form. 5 A. For established generics. 6 Q. Right. 7 A. That only have one supplier. 8 Q. Right. 9 A. Yes. 10 Q. So the pharmacy for establishing 11 generic drugs that are reimbursed under a MAC 12 under this policy, the pharmacy will receive a 20 13 percent margin in comparison to its actual 14 acquisition cost, right? 15 A. That's what this policy says, yes. 16 Q. And in fact that the North Carolina 17 Medicaid agency anticipates that usually the 18 margin will be substantially higher than that, 19 right? 20 MS. YAVELBERG: Objection, form. 21 A. No, I can't. 22 Q. It says right here in most cases, MAC</p>	<p>1 this deposition of Ms. Weeks. We are off the 2 record at 3:43. 3 (Recess.) 4 THE VIDEOGRAPHER: This is the start of 5 tape No. 6 in this deposition of Ms. Weeks. 6 We're on the record at 3:44. 7 BY MR. KATZ: 8 Q. Ms. Weeks, I've handed you what has 9 been marked Exhibit 63. Do you recognize this 10 document? 11 A. Yes. 12 Q. What is it? 13 A. It is a presentation provided on the 14 pharmacy state MAC by the Division of Medical 15 Assistance. 16 (The document referred to was 17 marked Defendant's Exhibit Dey 063 for 18 identification.) 19 Q. I'd like you to turn to page eight. 20 Now, this is an example of a MAC that 21 is set when there's only one established generic 22 drug, right?</p>

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